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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,787	11/07/2000	Benoit Laflamme		4281
28291 7590 04/02/2007 FETHERSTONHAUGH - SMART & BIGGAR 1000 DE LA GAUCHETIERE WEST SUITE 3300 MONTREAL, QC H3B 4W5 CANADA			EXAMINER MASINICK, MICHAEL D	
			ART UNIT 2125	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	04/02/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/709,787

Applicant(s)

LAFLAMME ET AL.

Examiner

Michael D. Masinick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 155,160-163,168-172,180-183,185-187,190-200,203-206 and 210-219 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 155,160-163,168-172,180-183,185-187,190-200,203-206 and 210-219 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's response dated 3/16/2007 has been considered and is found to be partially persuasive. In preparation for appeal, all art rejections of the pending claims have been removed based on applicant's arguments. All pending claims are rejected under USC 112 for new matter issues. Examiner thanks applicant for pointing out the error with regard to enablement vs. new matter issues. The previous rejections are maintained, but rephrased below to clearly indicate the lack of support in the specification as originally filed for the subject matter applicant asserts is allowable over the prior art.
2. Unfortunately this discussion regarding the new matter situation and the downloading of updated software to the spa controller has been rehashed several times. Applicant's discussion in the response dated 3/16/2007 does an excellent job summing up the issues regarding new matter and suggests that the original specification is clear. Unfortunately the examiner disagrees and maintains all previous arguments with regard to newly claimed subject matter that is not clearly found in the specification.
3. In page 19 of the last response, applicant suggested three paragraphs, which contained suggestions regarding the transmittal of error messages or the monitoring of error messages. However, none of these passages specifically and clearly used the language of the claims. The specification does not clearly support the current claim language.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 155, 186, 187, 195, 200, 216 and all claims dependent therefrom (all pending claims) are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

6. Referring to independent claims 155, 186, 195, 200, and 216, there is a lack of support in the original disclosure for “receiving communication signals conveying software components over the communications link, said software components comprising updates to software already installed on said spa controller.” As noted above, applicant cited in a telephone conversation with the examiner, pages 9 and 10, and figures 3 and 8 as support for this claim element.

Examiner finds no support on in figure 3 for this feature. Figure 8 shows button 153 which is labeled “send new software to spa...”. Likewise, the description of this feature on page 9 states “In block 152, the dealer can monitor the current software installed in spa controller 53. If there is a software update, the dealer can download this info by clicking on button 153.” “This info” is a vague term that could mean downloading the information about whether there IS an update to the spa controller or downloading the software version number. While it is possible that the

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downloading of a software component through the communication link to the spa controller was the intended purpose of these statements in the specification, it is certainly unclear.

7. As this feature has become the main focus of the applicant's arguments regarding patentability of the pending claims, this rejection is again put forth. Applicant's arguments set forth in paper dated 2/20/2006 state reasons why the phrasing on pages 8 and 9 of the original specification, figure 8, as well as original claim 29 set forth downloading a software component to the spa controller. This issue is not the downloading of software, or the updating of the software contained on the controller. It is unclear that the intention of the original specification was to have software be downloaded that was an update to software already installed on said spa controller and that this communication signal is sent through the interface signal converter as claimed. Examiner is not convinced that a software button labeled "Send New Software To Spa" can qualify as enablement of this claim element.

8. Referring to independent claim 187 and dependant claim 194, there is a lack of support in the original specification for transmitting a record of errors or that this record of errors comprises the number of times an error has occurred. In page 19 of the last response, applicant suggested three paragraphs all which contained suggestions regarding the transmittal of error messages or the monitoring of error messages. However, none of these passages specifically and clearly used the language of the claims. The specification does not clearly support the current claim language.

Conclusion

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael D. Masinick whose telephone number is (571) 272-3746. The examiner can normally be reached on Mon-Fri, 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael D Masinick
Primary Examiner
Art Unit 2125

MDM, March 26, 2007